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Arizona Corporation Commission

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IN THE MATTER OF ILEC UNBUNDLING)
OBLIGATIONS AS A RESULT OF THE)
FEDERAL TRIENNIAL REVIEW ORDER.)
_____)

DOCKET NO. T-00000A-03-0369

COMMENTS OF ALLEGIANCE TELECOM, INC.

Allegiance Telecom, Inc. ("Allegiance"), through its attorneys, submits these comments pursuant to the Commission's Procedural Order, issued June 4, 2003 ("Order"). In its Order, the Commission ordered that interested parties comment on certain procedural and substantive matters.

Allegiance is a national facilities-based integrated communications provider that offers a competitive, one-stop-shopping package of telecommunications services, including local, long distance and Internet services, to business, government and other institutional users in 36 metropolitan areas across the United States. Allegiance targets

the needs of small to medium-sized businesses, who have typically been underserved by the incumbent local exchange carriers, and large businesses with multiple locations.

In Arizona, Allegiance provides service in the Phoenix market through its local operating subsidiary Allegiance Telecom of Arizona, Inc. Allegiance provisions its services by using its own switches in combination with unbundled loops and transport ("UNEs") purchased from ILECs. On a nationwide basis, in states in which it operates, Allegiance provides 9% of all CLEC lines utilizing UNE loops.¹ Given Allegiance's position as one of the largest facilities based providers in the United States and its extensive use of UNEs, the Federal Communications Commission's ("FCC") *Triennial Review Order*² and this Commission's determinations pursuant to the *TRO*'s delegations to the states will have a significant impact on Allegiance's business. Accordingly, Allegiance offers the following comments and suggestions in responding to the Commission's invitation for input in designing the Commission's processes for implementing the *TRO*.

¹ Calculated by using Allegiance internal line counts as of June 2003 and the FCC Report on Local Telephone Competition as of December 31, 2002 (released June 12, 2003).

² *Report and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket No. 01-338 (rel. August 21, 2003 ("Triennial Review Order" or "TRO"))

QUESTIONS POSED BY THE COMMISSION

90-Day Proceeding

The 90-day proceeding provides CLECs an opportunity to challenge the FCC's presumption that competitors are not impaired if they are not provided unbundled switching to serve enterprise customers, defined for purposes of the 90-day proceedings as customers served by DS1 capacity and above loops.

Allegiance does not intend to challenge this presumption of non-impairment. However, we do note that the FCC reaffirmed that high capacity loops at the DS1 or DS3 level must continue to be provided on a UNE basis. Allegiance has encountered problems in the Qwest service territories, including Arizona, where Qwest has refused to provide UNE DS-1 loops on the grounds that it does not have facilities available to provide such UNE loops.³ In the recently proposed Arizona 271 order in Docket No. T-00000A-97-0238, the Arizona staff recommended that Qwest should suspend its new policy of assessing construction and conditioning charges to CLEC's and reinstate their prior policies consistent with SGAT pricing. The FCC clarified in the *TRO* that these refusals to provide UNE DS-1 loops are improper and that such behavior constitutes impermissible discrimination against CLECs. Accordingly, if a proceeding is opened on the 90-day issues, Allegiance requests that any finding by this Commission upholding the FCC presumption of non-impairment in the enterprise switching market be explicitly conditioned on the incumbent carriers' adherence to the direction of the FCC rules, and

³ Qwest changed its provisioning process after the FCC had issued its Public Notice of the *TRO*, but before the FCC had issued the text of the *TRO*. The policy change broadened the circumstances under which Qwest would refuse to provision facilities based on Qwest's view that it was not required to undertake even routine modifications to its facilities when a loop was requested.

applicable Arizona rules, limiting the ability of ILECs to refuse to provide UNE DS-1 loops on the ground that no facilities are available.

90-Day Proceeding Process

The Commission should require that any CLEC wishing to challenge the presumption of no impairment must file a petition to initiate a proceeding by October 2, 2003. The Petitioner should set out a proposed schedule as part of the petition. Regardless of the number of petitions filed by CLECs seeking to challenge the presumption of no impairment, the Commission should conduct a single proceeding on the 90-day issues that would be binding on all ILECs and CLECs that are certified in the state. Once a petition is filed, the Commission should notify all certificated local exchange carriers of the opening of a proceeding.

As a general rule, Allegiance submits that a full evidentiary hearing complete with pre-filed testimony, cross examination and post-hearing briefing is necessary for the Commission to make an informed decision. Nonetheless, given the brevity of the 90-day window, the normal and proper process of requiring a full evidentiary hearing is probably not the most efficient way to proceed. Accordingly, should the Commission decide to truncate the process, it should at the very least mandate that all factual submissions be made under oath.

Relationship Between the 90-day and 9-month Proceedings

Allegiance recognizes no procedural relationship between the 90-day and the 9-month proceedings. There may, however, be discovery questions that are relevant to both proceedings.

Changes to Code; Rulemaking

Any conclusions reached as a result of the 90-day proceeding should be codified in the state Administrative Code with associated performance metrics and penalties for not meeting those metrics.

Use of Separate Dockets

The FCC has recommended a 90-day and two 9-month proceedings. Due to the different timeframes and the likelihood of different participants, Allegiance recommends these be handled in separate dockets.

9-Month Proceeding Process

The *TRO* directs the state commissions to undertake two 9-month proceedings. The mass market local circuit switch proceeding will provide ILECs and/or CLECs an opportunity to challenge the FCC's presumption that competitors serving the mass market are impaired without the ability to procure unbundled switching from ILECs. The

loop and transport proceeding will provide ILECs and/or CLECS an opportunity to challenge the presumption of the FCC that competitors are impaired without the ability to purchase unbundled high-capacity loops and dedicated transport. While the scope of the issues investigated should follow the FCC's general and more granular guidelines issued in the *TRO*, Allegiance further suggests that to the extent impairment is found to exist in either proceeding, the Commission order corrective action, either in the 9-month proceedings or in prompt, follow-on proceedings, to eliminate or reduce the factors that cause impairment in particular areas. For example, although Allegiance is a facilities-based CLEC utilizing its own switches to serve small and medium business customers (both in the mass market and the enterprise market), our ability to serve a broader geographic area in Arizona and other states is constrained by the costs of collocation, especially the costs of power. Other issues, such as the cost of interoffice transport, may make it difficult for CLECs to expand their reach using EELs and should be investigated by the Commission in these proceedings. Finally, issues such as the time required to make minor upgrades to existing locations, such as the addition of APOT equipment, hinder a facilities-based competitor's ability to serve the market by preventing it from addressing growing demand for its services in a timely fashion.⁴ It is important that the Commission evaluate how these practices of the ILECs impair facilities-based CLECs from serving a larger footprint than what they serve today and order the ILECs to change their practices where appropriate in order to allow facilities-based CLECs to serve economically a larger geographic area in the state.

⁴ In Arizona, even simple changes to a CLEC's collocation arrangement require 100 days advance notice to the ILEC. The changes in most instances do not require any construction and can be accomplished in less than one day. Artificial delays, such as unduly long lead times, can seriously hinder a facilities-based competitor's ability to address market demand

The Commission should require that any ILEC or CLEC wishing to challenge the presumption of impairment must file a petition to start a proceeding by October 2, 2003. Any petition on the loop and transport issues should state with specificity the particular loop locations and routes for which the petitioning party is claiming no impairment and the proceeding should be limited to an evaluation of the specific locations and routes put in issue in such petitions.

Allegiance submits that a full evidentiary hearing complete with pre-filed testimony, cross-examination and post-hearing briefing is appropriate for the Commission to make an informed decision.

Regardless of the number of petitions filed by parties seeking to challenge the presumption of impairment, the Commission should conduct one proceeding on the mass market switching issue and a separate proceeding on the loop/transport issues. Each proceeding would be binding on all ILECs and CLECs that are certified in the state. Once a petition is filed, the Commission should notify all certificated local exchange carriers of the opening of a proceeding.

Coordinating Discovery and Schedules with Other States

The *TRO* outlines specific factors and triggers that the states must consider in their impairment analyses. Given the uniformity of such standards, Allegiance strongly urges the Commission to coordinate with other states in developing standard sets of data

requests. Unquestionably, the nation-wide proceedings pursuant to the *TRO* will create a substantial, if not unprecedented, drain on state commission and carrier resources. Everyone will benefit to the extent that data requests are standardized to minimize the need to respond to different data requests and to make comparisons between different states more feasible. Allegiance also strongly recommends that commissions coordinate their schedules of return of data and hearings to avoid unnecessary conflicts.

Extent of Participation

Allegiance intends to actively participate in the 9-month proceedings.

CONCLUSION

As a facilities-based CLEC utilizing its own switches to serve both enterprise and mass market business customers, Allegiance is well positioned to assist the Commission as it undertakes to review the presumptions of the FCC's Triennial Review Order.

Respectfully submitted,



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September 10, 2003